COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL NO.1913 of 2001
(Old No.1367 of 1988)

Brahm Singh Patwal S/o Autar Singh Patwal

..... Appellants

Versus

The State **..... Respondent**

Approved for reporting.
~~Not approved for reporting.~~

Date: August 7, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO.1913 of 2001
(Old Case No.1367 of 1988)

Brahm Singh Patwal S/o Autar Singh Patwal,
R/o Vill. Gajeli Patti Chalansyun, P.S. Srinagar, Distt. Pauri Garhwal
..... Appellant

Versus

The State ..... Respondent

Dated: August 07, 2007

Sri Lokendra Dobhal, learned counsel for the appellants.
Sri Harish Pujari, learned Addl. GA for the State.

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 27.05.1988 passed by Sessions, Judge, Pauri Garhwal in Session Trial No.20 of 1987, whereby the learned Sessions Judge has convicted the appellant under Sections 304-B and 201 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him for ten years R.I. u/s 304-B of IPC and for two years R.I. u/s 201 of IPC. Both the sentences were directed to run concurrently.

2. In brief, the prosecution case is that complainant Captain B.S. Bisht lodged a FIR on 22.2.1987 in the P.S. Srinagar with the allegations that his sister Smt. Kamla Devi aged about 20 years was married with the appellant Brahm Singh Patwal on 10.10.1986. It was also stated that appellant has committed murder of his sister on 12.2.1987 in his house. On 13.2.1987 in the night about 11:00 P.M., appellant had gone to the house of his uncle Jeet Singh Bisht and has taken his signatures on one paper. It was also stated that appellant was harassing and torturing his sister for the demand of dowry from last two months. For that, he got the information, from his house. After receiving this information, he had

written a letter that when he will get the leave, he will come to the house and will take some articles with him but in the meantime on 18.2.1987, he received a telegram from his house in which it was stated that Kamla Devi had died. On this information on 21.2.1987, he had come to his house and after inquiring the matter and making necessary investigation, he had come to Srinagar Police Station. Then the Station Officer has stated that he had got no information about the said incident. After the inquiry, he came to the definite conclusion that the appellant had committed cruel murder of his sister and after that in order to destroy the evidence, he had burned the body of his sister. With the same allegations, he had lodged the FIR i.e. Ex.Ka-1 on 22.2.1987 in P.S. Srinagar. The Chik Report on the basis of same FIR was prepared i.e. Ex.Ka.5. The entry was made in the G.D. i.e. Paper No.35-Ka. The investigation of the case was entrusted to Sub-Inspector R.R. Singh and later on the investigation was transferred of Deputy S.P. G.S. Martolia. During the course of investigation, he has recorded the statements of the witnesses and letter dated 28.12.1986 was taken into possession by the I.O. on 23.2.1987 and for that a Fard was prepared i.e. Paper No.31-Ka and the said letter Ex.Ka-2. He has also prepared a map of the place of occurrence i.e. Ex.Ka-7. After completing the investigation, the I.O. has submitted the charge sheet against the appellant and one Hukum Singh u/s 302, 201 and 304-B/34 IPC in the court of CJM, Pauri Garhwal.

3. Learned CJM, Pauri Garhwal has committed the case to the court of Sessions on 7.7.1987 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C. On 4.12.1987, the learned Sessions Judge, Pauri Garhwal framed the charge against the appellant u/s 304-B of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried. On the same day i.e. 4.12.1987, charge against appellant and Hukum Singh was framed u/s 302/34 IPC and 201 IPC. They also pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution has examined P.W.1 Sri Vikram Singh Bisht, complainant of the case, P.W.2 Smt. Mangli Devi who is the Aunt (*Chachi*) of deceased, P.W.3 Sri Jeet Singh, uncle of deceased and P.W.4 G.S. Martolia, Dy. S.P., I.O. of the case.

5. Thereafter, the statements of the appellant and Hukum Singh were recorded u/s 313 of Cr.P.C. who have denied the allegations made against them. They did not produce any documentary evidence but in oral evidence, they have examined two witness D.W.1 Tika Ram and D.W.2 Kalyan Singh.

6. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Pauri Garhwal vide his judgment and order dated 27.5.1988 convicted and sentenced the appellant for ten years R.I. u/s 304-B of IPC and for two years R.I. u/s 201 of IPC. Both the sentences were directed to run concurrently. However, the accused Hukum Singh was acquitted of the charge punishable u/s 302/34 IPC and u/s 201 of IPC. Against the said judgment and order dated 27.5.1988, the appellant Brahm Singh Patwal has filed present appeal.

7. I have heard Sri Lokendra Dobhal, learned counsel for the appellant and Sri Harish Pujari, learned Addl. G.A. for the State and perused the entire material available on record.

8. To prove its case, the prosecution has examined P.W.1 Vikaram Singh Bisht who has stated in his statement that Kamla Devi was his real sister and her marriage was solemnized with appellant Brahm Singh Patwal on 10.10.1986. Before her marriage, his mother and father had died and he was having two brothers and four sisters and one unmarried brother and one unmarried sister were living along

with his uncle Jeet Singh in the village Jakh Dunda. Kamla Devi was also used to visit after her marriage house of Jeet

Singh and he was also in the employment. Jeet Singh wrote a letter to him that Kamla was complaining that her husband was harassing and torturing her due to non-fulfillment of the demand of dowry and he was demanding the dowry. Then he had replied that whenever he will come for the leave, he will take some articles with him and some articles he will give later on. On 18.2.1987, he received a telegram from Jeet Singh that Kamla had died. Then he had reached the village on 21.2.1987 and then Jeet Singh had told him that Kamla had died on 12.2.1987 and Brahm Singh had taken his signatures in one paper on 13.2.1987 from his uncle Jeet Singh. He also told him that after the marriage, Brahm Singh was harassing Kamla. When after the inquiry he was confident that his sister was murdered, then on 22.2.1987 he had lodged the report in Srinagar Police Station, i.e. Ex.Ka-1. Dx.Ka-2 is the letter which was written by him and that was in his handwriting. The said letter was written by him from Allahabad to his uncle Jeet Singh. He has also proved the letter Ex.Ka-3 which was written by him to his sister Kamla. This witness was cross-examined at length but nothing has come out in his evidence, which may create any doubt in his statement. The evidence of this witness is trustworthy, reliable, believable and natural.

9. P.W.2 is Smt. Mangli Devi who had stated in her statement that Kamla Devi was daughter of her brother in law (Jeth) and Kamla Devi was married with Brahm Singh in the month of *Asooj* (month with the Hindi calendar relating to the month of October as per English calendar). After the marriage, Kamla had come in a month thrice and she told her that her husband was harassing her and her husband was saying that her brother is a respected doctor and he has not given anything in the dowry. Kamla has also told her that her husband, the present applicant, was demanding Refrigerator,

Ear *Kundals,* Sewing Machine, Gas Cooker, Stove and some money. This fact she had told her husband and then her husband told him that he had written a letter to Vikram for

the same purpose. Kamla had come to the house in the month of *Magh* (month with the Hindi calendar relating to the month of February and per English calendar) and after three days of her departure, she received the information that Kamla had died. When the last time, Kamla had come there, then she was not happy. She has further stated that three persons Matwar, Binnu and Saru had come and they had stated that her niece had died due to the hanging and since her husband was ill, hence due to this reason he could not go there. This witness was also cross-examined at length but nothing has come out in her evidence, which may create any doubt in her statement. The evidence of this witness is trustworthy, reliable, believable and natural.

10. P.W.3 is Jeet Singh who has stated in his statement that his niece Kamla Devi was married with Brahm Singh on 10.10.1986. After three days of the marriage, she had come to his house and then after one month she had come. The mother and father of Kamla Devi and died in the year 1980 and 1983 and his one brother was doctor in the Army and second brother who is 12-14 years of age, was living with him. He has further stated that whenever Kamla used to visit his house, she had told him that Brahm Singh was harassing and beating her due to demand of dowry. He has further stated that his family and the family of Inder Singh was a joint family and Kamla Devi is the daughter of Inder Singh. He has further stated that in the last visit, Kamla had come to his house on 7.2.1987 to attend the marriage of daughter of his cousin brother Avtar Singh and she was very upset and was weeping. She had asked about the articles then he had told him that when her brother would come, he will get the articles. Then Kamla had told him that her husband is not getting dowry

that is why he used to continuously beat her. He has further stated that in the month of December, Kamla had told him that her husband was demanding certain articles and for that reason, he had written a letter to Vikram Singh. He has

further stated that on 13.2.1987 at about 3:00 P.M., Matvar Singh, Binnu and Saru came to him and told him that Kamla was not feeling well and he was called to Gadeli and when he had inquired in detail, then they had told him that Kamla was hanging and she had died. Then he had told them to inform in the police station and give telegram to her brother Vikram Singh and then these people had gone from there. On the half night, Brahm Singh Patwal (appellant) and Hukum Singh had come in his house and they had told him that they had come with Taxi and asked him to sign on a paper and they had threatened him that otherwise he will face the same consequences as were happened. Since he was alone in the house, hence he had signed on the papers. He had identified the signatures that paper is Ex.Ka-4. On the next day morning, he had sent a telegram to Vikram Singh that Kamla had died. They Vikram Singh had reached to the village on 21.2.1987 and then he had handed over the papers to him after narrating the entire incident to him. This witness was also cross-examined at length but nothing has come out in his evidence, which may create any doubt in his statement. The evidence of this witness is trustworthy, reliable, believable and natural.

11. P.W.4 is G.S. Martolia, Dy. S.P. Parui Garhwal who has stated that in February, 1987 he was posted in the same post. Ramesh Chandra Bhatt has worked with him and he had identified his signatures and writing. On 22.2.1987, he was posted at Srinagar Police Station and Chik Report Ex.Ka-5 was in his handwriting. On 10.3.1987, the investigation of this case was entrusted to him and he has started the investigation. On 25.3.1987, he had recorded the statement of

Jeet Singh, Mangla Devi and other witnesses and he had recorded the statements of the witnesses in the different dates and on 18.5.1987, he had submitted the charge sheet against the present appellant and Hukum Singh, i.e. Ex.Ka-6. He had

also identified the map i.e. Ex.Ka-7 and also inspected the place of occurrence and the map prepared on the spot was correct.

12. Thereafter, the statements of the appellant and Hukum Singh were recorded u/s 313 of Cr.P.C. They have denied the allegations made against them and in defence they did not produce any documentary evidence and in oral evidence, they had produced D.W.1 Tika Ram and D.W.2 Kalyan Singh. D.W.1 Tika Ram had stated that appellant Brahm Singh was married in 1986 and he was also a Pandit to assist Nathi Ram Chetwal from the side of the bridegroom. He has stated that deceased was not feeling well at the time of marriage. D.W.2 is Kalyan Singh who is the real brother of the present appellant, who has started that Kamla Devi had died on 13.2.1987 and his brother had gone to Srinagar and he had gone to call him. He has further stated Kamla had died at 8:00 A.M. in the morning and he had gone to call his brother at 7:00 A.M. in the morning.

13. Sri Lokendra Dobhal, learned counsel for the appellant has submitted that FIR is delayed. The incident is said to have taken place on 12.2.1987 and the FIR was lodged by the brother of deceased on 22.2.1987 at Srinagar Police Station. As per the prosecution case, deceased had died in the house of present appellant on 12.2.1987 and he has sent three persons namely Matvar Singh, Binnu and Saru to the house of Jeet Singh, uncle of the deceased on 13.2.1987. These persons have informed Jeet Singh that deceased Kamla Devi had died due to hanging and in the night of 13/14.2.1987, Brahm Singh and Hukum Singh reached to the house of Jeet Singh and Hukum Singh had taken signatures of Jeet Singh on one

paper i.e. Ex.Ka.4. On the next day morning, Jeet Singh gave a telegram to the brother of deceased Vikram Singh Bisht who received telegram on 18.2.1987, who was a doctor in the Indian Army an posted as Captain and after getting the leave from the army, he had reached to the village on 21.2.1987 and after inquiring the matter from the villagers, when he was confident that his sister was murdered by the present applicant in his house and he has burned the dead body of deceased in order to destroy the evidence of murder, then he had lodged the FIR in 22.2.1987 at Srinagar Police Station. In this way, the delay in lodging the FIR is explained and it is proved by the circumstances that the FIR is not delayed and the delay is not intentional but it was compulsion. In this way, the argument of learned counsel for the appellant is misconceived and is not acceptable on the basis of the above-said evidence.

14. Learned counsel for the appellant further submitted that on the basis of the evidence above-said, there is no case made out against the appellant u/s 304-B and 201 of IPC. It is necessary to reproduce Sections 304-B and 201 of IPC which read as under: -

> ***[304B. Dowry Death*** *– (1) Where the death of a woman is caused by any burns of bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation – For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
>
> *(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extended to imprisonment for life.]*
>
> ***201. Causing disappearance of evidence of offence, or giving false information to screen offender-*** *Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that*

offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offences.*- shall if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

if punishable with imprisonment for life*- and if the offence is punishable with [imprisonment for life[, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*

if punishable with less than years' imprisonment*- and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punishable with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.*

Section 113-B of Indian Evidence Act, 1872 is also relevant to mention here which reads as under: -

[113-B Presumption as to dowry death*- the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected but such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*
Explanation – For the purposes of this section "dowry death", shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).]

Section 2 of Dowry Prohibition Act, 1961 is also relevant to mention here which also reads as under: -

2. Definition of 'dowry'*- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person.

At or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explaination II- The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

15. To proved the evidence u/s 304-B, it is essential to prove the following essentials (1) Death of a woman should be caused by any burns or bodily injury or otherwise than under normal circumstances, (2) death should be caused within seven years of marriage, (3) woman must have subjected to cruelty or harassment by her husband or any relative or her husband (4) cruelty or harassment should be for or in connection with any demand for dowry to the women before her death.

16. From a perusal of the evidence, it is proved that deceased Kamla Devi had not died in normal circumstances. From the evidence of P.W.1 Captain Vikram Singh Bisht, P.W.2 Smt. Mangli Devi and P.W.3 Jeet Singh, it is well established that the Kamala Devi had died in the house of present appellant Brahm Singh Patwal by hanging and that is not a death in normal circumstances. This fact is proved when the Kamla Devi had died on 12.2.1987 at Gadeli in the house of appellant and he had sent three persons namely Matvar Singh, Binnu and Saru to the house of Jeet Singh, uncle of deceased Kamla Devi. These persons had informed Jeet Singh that Kamla Devi had died due to the hanging and in the house of appellant on 12.2.1987. on the night of 13/14.2.1987, appellant and Hukum Singh came to the house of Jeet Singh and has taken his signatures on one paper by threatening him that if he will not sign on the paper then he will fact the same consequences as were happened. This fact is supported by the evidence of P.W.1 Captain Vikram Singh Bisht, P.W.2 Smt. Mangli Devi and P.W.3 Jeet Singh. Thus from the evidence discussed above, it is clear that Kamla Devi had died due to hanging in the house of appellant not in the normal circumstances.

17. The next circumstance is that Kamla Devi was married on 10.10.1986 and she had died on 12.2.1987 i.e. after about 4 months of her marriage i.e. less than 7 years of

her marriage and this is an admitted fact between both the parties from the evidence. P.W.1 Captain Vikram Singh Bisht, P.W.2 Smt. Mangli Devi and P.W.3 Jeet Singh have clearly stated in their statements that the marriage of Kamla Devi was soleminized on 10.10.1986 and she had died on 12.2.1987 at the house of present appellant and this fact was also admitted in the statement recorded u/s 313 of Cr.P.C. of the appellant.

18. From the statement of P.W.1 Captain Vikram Singh Bisht, P.W.2 Smt. Mangli Devi and P.W.3 Jeet Singh, it is well established by the prosecution beyond reasonable doubt that deceased Kamla Devi was mentally and physically tortured and harassed for the demand of dowry just before her death. Smt. Mangli Devi P.W.2 and Jeet Singh P.W.3 have clearly stated that when after the marriage, whenever Kamla Devi used to visit her house, she had specifically stated that the appellant was demanding articles such as refrigerator, ear *Kundals,* Sewing Machine, Gas Cooker, Stove and some money. In the last visit, when Kamla had come to the house of Jeet Singh on 7.2.1987 to attend the marriage of daughter of Avtar Singh, she was very upset and was weeping. She had asked about the articles then he had told him that when her brother would come, he will get the articles and this fact is also proved from the letter Ex.Ka-2 dated 28.12.1986. In the letter it was specifically stated that he will take ear rings and the pressure cooker for Kamla Devi and for the rest of articles, he had got no money and that he will get after sometimes. This letter was written on 28.12.1986 by Captain Vikram Singh Bisht to his uncle Jeet Singh in reply to letter sent by Jeet Singh. Jeet Singh had written letter to P.W.1 Vikram Singh Bisht on the demand made by Kamla to him. This fact was told by Kamla to him when last time, she had come to the house of Jeet Singh on 7.2.1987 to attend the marriage of daughter of Avtar Singh. Thus from this fact, it is well established and proved that deceased Kamla Devi was

mentally and physically tortured and harassed by the appellant just before her death.

19. From the above said facts and circumstances, the prosecution has established it case beyond reasonable doubt against the appellant u/s 304-B of I.P.C. It is also well established that appellant has burned the body of deceased in order to destroy the evidence of murder without informing the brother of deceased Capt. V.S. Bisht and in this way he has also committed offence u/s 201 of IPC.

20. Section 113-B of Indian Evidence Act clearly states that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. As per this Section, the case is well established and proved against the appellant u/s 304-B and 201 of the I.P.C.

21. The facts and circumstances narrated above also goes against the appellant and proved against him that (1) appellant has not informed to any Patwari or any Police Station about the death of deceased Kamla Devi, (2) He had not prayed anywhere in the police station for conducting the post-mortem of the dead body and he has failed to explained in his statement recorded u/s 313 of Cr.P.C. as to why deceased was hanged in his house and how she had died in his house. It is the duty of the appellant to proved how his wife Kamla had died in his house in hanging condition and he has not informed about the death of deceased to his brother Capt. V.S. Bisht. In support of its case, the defence had examined D.W.1 Tika Ram who has stated that he was present at the time of marriage and she was not feeling well. The statement of this witness is not helpful to the appellant. D.W.2 Kalyan Singh, who is the brother of appellant, has stated in

his statement he had gone to Srinagar to call his brother Brahm Singh (present appellant) at 7:00 A.M. that Kamla Devi had died at 8:00 A.M. The statement of this witness is self-contradictory and against the facts and circumstances of the case and even otherwise the evidence of this witness is not in any way helpful to the appellant.

22. In view of the above, the learned Sessions Judge, Pauri Garhwal has rightly convicted the appellant under Sections 304-B and 201 of the IPC and rightly sentenced him for ten years R.I. u/s 304-B of IPC and for two years R.I. u/s 201 of IPC and accordingly, both the sentences were directed to run concurrently.

23. For the reasons recorded above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 27.5.1988 passed by Sessions Judge, Pauri Garhwal is hereby confirmed.

24. Let the record of the case be sent back immediately to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

07.08.2007
Rajeev Dang